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275	09/29/97	Post-Hearing Brief of WorldCom, Inc.
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TAB	RECORD OF LOUISIANA PSC DOCKET NOS. 22022/22093 Cost Docket	
277	09/29/97	Post-Hearing Brief of Sprint Communications Company, L.P.
278	09/29/97	Post-Hearing Brief of American Communication Services of Baton Rouge, Inc., American Communication Services of Louisiana, Inc., and American Communication Services of Shreveport, Inc.
279	09/29/97	LPSC Staff Post Hearing Brief
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281	09/29/97	AT&T Communications of the South Central States, Inc.'s Post-Hearing Brief
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295	08/30/96	Direct Testimony of Guy L. Cochran, Robert C. Scheye and William E. Taylor on Behalf of BellSouth
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297	08/30/96	Direct Testimony of Patricia McFarland on Behalf of AT&T Communications of the Southern States, Inc.
298	08/30/96	Direct Testimony and Exhibit of Dr. Marvin H. Kahn
299	08/30/96	Direct Testimony of Greg Darnell on Behalf of MCI Telecommunications Corporation and MCI metro Access Transmission Services, Inc.
300	09/04/96	Report of Status Conference Procedural Schedule

TAB	RECORD OF LOUISIANA PSC DOCKET NOS. 22020 Resale Pricing	
301	09/13/96	Rebuttal Testimony of Patricia McFarland on Behalf of AT&T Communications of the Southern States, Inc.
302	09/13/96	Rebuttal Testimony of Greg Darnell on Behalf of MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc.
303	09/13/96	Rebuttal Testimony and Exhibit of Dr. Marvin H. Kahn
304	09/13/96	Rebuttal Testimony of Joseph Gillan on Behalf of AT&T Communications of the South Central States, Inc. and WorldCom, Inc., d/b/a LDDS WorldCom
305	09/13/96	Rebuttal Testimony of Guy L. Cochran, William E. Taylor, and Robert C. Scheye.
306	09/16/96	BellSouth's Motion for Expedited Discovery and Leave to Present Surrebuttal Testimony; and Alternatively, Motion to Continue Hearing
307	09/16/96	Hearing Transcript: Volume 1
308	09/17/96	Hearing Transcript: Volume 2
309	09/18/96	Hearing Transcript: Volume 3
310	09/26/96	Brief of Sprint Communications Company L.P.
311	09/27/96	Proposed Findings of Fact and Conclusion of Law
312	09/27/96	Post-Hearing Brief of BellSouth
313	09/27/96	Post-Trial Brief of AT&T
314	09/27/96	Post-Hearing Brief of MCI Telecommunications Corporation
315	09/27/96	Post-Hearing Brief filed by the Small Company Committee of the Louisiana Telephone Association
316	09/27/96	Brief of the Public Service Commission
317	09/27/96	Post-Hearing Brief of WorldCom, Inc. d/b/a/ LDDS WorldCom
318	09/27/96	Post Hearing Comments Submitted on Behalf of Global Tel*Link
319	09/27/96	Original Post-Hearing Brief of the Louisiana Cable Telecommunications Association

TAB	RECORD OF LOUISIANA PSC DOCKET NOS. 22020 Resale Pricing	
320	09/27/96	MCI Telecommunications Corporation's Proposed Findings of Fact and Conclusions of Law
321	10/01/96	Reply Brief of Sprint Telecommunications Company L.P.
322	10/02/96	Reply Brief of AT&T
323	10/02/96	Reply Brief of the Louisiana Public Service Commission
324	10/02/96	Post-Hearing Reply Brief of BellSouth
325	10/02/96	Post-Hearing Reply Brief of MCI Telecommunications Corporation
326	10/09/96	Recommendation Setting Wholesale Discount Rate at 20.72%
327	10/14/96	BellSouth's Exception to Administrative Law Judge's Recommendation and Request for Oral Argument
328	10/16/96	Transcript of Open Session
329	11/12/96	Order Setting Resale Rates
330	12/17/96	Notice of Opportunity to Comment
331	01/09/97	Comments on Behalf of Global Tel*Link, Inc.
332	01/10/97	MCI Telecommunications Corporation's Opposition to the Filing of BellSouth's Exception to Administrative Law Judge's Recommendation and Request for Oral Argument
333	01/10/97	Opposition to Filing of Exception by BellSouth

APPENDIX D

TAB	DESCRIPTION	
1	10/1/97	Transcript of Open Session (LPSC §271 Docket and BellSouth/AT&T Arbitration Docket)
2	10/22/97	Transcript of Open Session (LPSC Cost Docket)
3	11/3/97	Affidavit of David Barron
4	1/29/97	Order U-22146 (BellSouth/Sprint Arbitration)
5	11/4/97	Declaration of William Denk
6	10/28/97	Affidavit of Aniruddha Banerjee
7	11/4/97	Affidavit of Silas Lee
8	BellSouth OSS Interface Presentation (Videotape)	
9	General Subscriber Service Tariff Excerpt	
10	Private Line Services Tariff Excerpt	

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Application by BellSouth Corporation,
BellSouth Telecommunications, Inc., and
BellSouth Long Distance, Inc., for
Provision of In-Region, InterLATA
Services in Louisiana

CC Docket No. _____

To: The Commission

**BRIEF IN SUPPORT OF APPLICATION BY BELL SOUTH FOR
PROVISION OF IN-REGION, INTERLATA SERVICES IN LOUISIANA**

Pursuant to section 271(d)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 271(d)(1), BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively, "BellSouth") hereby seek authorization to provide interLATA services originating in the State of Louisiana, including all services treated as such under 47 U.S.C. § 271(j). BellSouth has satisfied each of the four requirements for approval of its application. Part I of this Brief explains that BellSouth has received state approval of interconnection agreements under which it is providing interconnection and network access to facilities-based providers of telephone exchange service in accordance with section 271(c)(1)(A). Part II shows that BellSouth provides these facilities-based carriers and all competitive local exchange carriers ("CLECs")¹ interconnection and network access in accordance with the

¹ We use the term "CLECs" to refer to both potential and actual competitors, consistent with the Commission's use of this term. See Memorandum Opinion and Order, Application by SBC

fourteen-point competitive checklist of section 271(c)(2)(B). Part III confirms that BellSouth will abide by the safeguards of section 272.² Part IV demonstrates that approving BellSouth's application "is consistent with the public interest, convenience and necessity." 47 U.S.C. § 271(d)(3)(C). This Brief and supporting affidavits are available in electronic form at <<http://www.bellsouthcorp.com>>.

Pursuant to section 271(d)(2)(B) — which provides state commissions a formal consultative role on local issues in section 271 proceedings — the Louisiana PSC established a docket in December 1996 to consider BellSouth's eligibility to provide interLATA services in its State. Compliance Order at 1-4. That docket involved discovery, hearings, and evidentiary submissions from such parties as AT&T, MCI, Sprint, WorldCom, the Louisiana Cable Telecommunications Association, ACSI, Cox Fibernet, the Telecommunications Resellers Association, and the Communications Workers of America. Id. at 1 n.1, 3 n.7. All interested parties had a chance to present their views and examine BellSouth's evidence, although many chose to waive that opportunity. For instance, the U.S. Department of Justice did not participate

Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121, FCC No. 97-128, ¶ 35 (rel. June 26, 1997) ("Oklahoma Order").

² BellSouth intends to offer in-region, interLATA services in Louisiana through BellSouth Long Distance, Inc., which will operate in accordance with the requirements of section 272. However, all references to BellSouth Long Distance, Inc. should be understood to encompass any affiliate of BellSouth Telecommunications, Inc. (or its successors or assigns that provide wireline telephone exchange service) that operates consistent with this application's representations regarding the future activities of BellSouth Long Distance, Inc. The Commission should confirm when it approves this application that no further authorization, under section 214 or otherwise, is necessary for these entities to commence providing in-region, interLATA and international services in Louisiana.

and CompTel withdrew from the proceeding rather than disclose whose interests it truly represents. Id. at 1 n.1.

The state commission adduced evidence, evaluated the credibility of witnesses who were exposed to cross examination under oath, and reached conclusions on a nearly 6,200-page record that included over 3,800 pages of testimony. The record of the Louisiana PSC's proceedings, including the Compliance Order issued at the conclusion of those proceedings, is reproduced as Appendix C of this application. See also App. D at Tab 1 (Oct. 1, 1997 transcript).

In its Compliance Order, the Louisiana PSC provided a review of BellSouth's checklist offerings, paying special attention to the pricing requirements of the Act and OSS access, which was the subject of a live technical demonstration before the commissioners. Id. at 4-15. The commission concluded that BellSouth's Statement of Generally Available Terms and Conditions ("Statement") — as modified in accordance with the Louisiana PSC's instructions — meets each of the 14 checklist requirements.

In addition to its assessment of BellSouth's checklist compliance, the Louisiana PSC determined that "BellSouth's entry into the long distance market will further the Act's goal of assuring that consumers get the full benefit of competition" and will serve the public interest. Compliance Order at 14. "[T]he evidence presented," said the State commission, "mandates a finding that consumers in Louisiana, both local and long distance, would be well served by BellSouth's entry into the long distance market." Id. These determinations by the expert agency responsible for overseeing telecommunications markets in Louisiana provide the proper starting point for this Commission's review of BellSouth's application.

Finally, to carry out its responsibilities under section 252, the PSC established separate cost proceedings to establish rates for interconnection, unbundled network elements, and resale. The Louisiana PSC's cost proceedings were as thorough as its docket under section 271. Before establishing a discount rate in its Resale Order, the Louisiana PSC held extensive proceedings, considered detailed cost studies, and consulted an independent expert.³ Likewise, before issuing its Pricing Order (on interconnection and UNE rates) on October 24, 1997,⁴ the Louisiana PSC considered cost studies, supporting briefs, and live testimony from 33 witnesses representing BellSouth and its competitors, and hired an outside consultant to conduct an independent analysis and testify before the commission. Pricing Order at 1-4. Briefs, transcripts, cost studies, orders, and other relevant portions of the records of these two dockets are reproduced in Appendix C of this application, at Tabs 198-333; see also App. D at Tab 2 (Oct. 22, 1997 transcript).

These proceedings, together with other State proceedings conducted to oversee local interconnection negotiations under sections 251 and 252 of the Telecommunications Act, constitute an extraordinary commitment of resources by the Louisiana PSC. Although opponents of this application predictably will attempt to disparage the Louisiana PSC's methods and findings, that is only because these parties' arguments were found meritless after full investigation. The Louisiana PSC has performed its responsibilities under section 271 with diligence and

³. Order No. U22020, Review and Consideration of BellSouth's Resale Cost Study Submitted Pursuant to Section 1101(D) of the Louisiana PSC Local Competition Regulations, Dkt. No. U-22-2 (LPSC issued Nov. 12, 1996) (App. C at Tab 329).

⁴. Order No. U-22022/22093-A, Review and Consideration of BellSouth's TSLRIC and LRIC Cost Studies Submitted Per Sections 901.C and 1001.E of the LPSC Local Competition Regulations, Dkt. Nos. U-2202/22093 (LPSC issued Oct. 24, 1997) (App. C at Tab 285).

thoroughness; if there are supposed gaps in the record before the Louisiana PSC, that is solely because parties failed to present their evidence or ask their questions when invited to do so. This Commission must not countenance efforts to end-run the investigations of state commissions that are most familiar with the facts and best positioned to determine local competition issues. It should, instead, accord the findings of the Louisiana PSC the deference to which they are properly entitled under section 271.

I. BELLSOUTH MAY PROCEED UNDER TRACK A

BellSouth has opened its local markets in Louisiana to competitors both by negotiating agreements with individual CLECs and by obtaining State approval of terms and conditions for access and interconnection that are generally available to all CLECs in the State. While wireline CLECs have limited their facilities-based entry in Louisiana in order to pursue the most economically attractive opportunities, BellSouth nonetheless is eligible to apply for interLATA relief under Track A based on its interconnection agreements with several wireless carriers. These local carriers have seized the opportunities available to all CLECs in Louisiana.

A. BellSouth Has Taken All Required Steps to Open Local Markets in Louisiana

BellSouth has done its part to facilitate competitive entry in Louisiana by negotiating agreements with individual CLECs and offering interconnection and network access through its Statement of Generally Available Terms and Conditions.

1. BellSouth Has Negotiated Agreements with Numerous CLECs

BellSouth's negotiators have devoted countless hours to fielding CLEC requests and negotiating arrangements that meet individual CLECs' needs. As a result of these efforts,

BellSouth has signed more local interconnection agreements than any other incumbent LEC.

Indeed, BellSouth was responsible for finalizing about 45 percent of all Bell company agreements as of July 1997. Woroch Aff. ¶ 41 (App. A at Tab 15).

In Louisiana, BellSouth has executed approved agreements with 70 different telecommunications carriers. See Wright Aff. Attach. WLPE-A. BellSouth's 76 State-approved agreements and the Louisiana PSC orders and notices approving them are reproduced in Appendix B of this application.⁵ All the agreements except BellSouth's agreements with AT&T

⁵ The Louisiana PSC formally approved agreements between BellSouth and the following CLECs: Advanced Tel, Inc.; American Communications Services, Inc. (Separate Interconnection and Resale Agreements); American MetroComm Corporation (Interconnection Agreement); AT&T Telecommunications of the Southern Central States; AT&T Wireless Services, Inc.; BellSouth Cellular Corporation; Comm. Depot, Inc.; Communication Brokerage Services, Inc.; Competitive Communications, Inc.; DeltaCom, Inc.; FiberSouth, Inc.; GNet Telecom, Inc.; Hart Communications; ICG Telecom Group, Inc.; Interlink Telecommunications of Florida, Inc.; Intermedia Communications, Inc.; KMC Telecom, Inc.; LCI International Telecom Corporation (Separate Resale and LIDB Storage Agreements); National Tel (Interconnection Agreement) Powertel, Inc.; Tie Communications, Inc.; TriComm, Inc.; Unidial Communications, Inc.; US LEC of North Carolina L.L.C.; U.S. Long Distance, Inc.; WinStar Wireless, Inc.

In addition, if the Commission docket an interconnection agreement and no protest or intervention is filed, the agreement is deemed approved after the 90 day period for Commission review has expired. See generally Affidavit of David Barron (App. D at Tab 3); 47 U.S.C. § 252(e)(4). Agreements between BellSouth and the following CLECs became approved in this fashion: ACCESS Integrated Networks, Inc.; ALEC, Inc.; Alliance Telecommunications, Inc.; American MetroComm Corporation (Resale Agreement); Annox, Inc.; AXSYS, Inc. (Separate Interconnection and Resale Agreements); BTI Telecommunications, Inc.; Centennial Cellular Corporation; Comm South Companies, Inc.; Communication Options Southern Region, Inc.; Cybernet Group; Davco, Inc.; Data & Electronic Services, Inc.; Diamond Telephone; Don-Mar Telecommunications, Inc.; EZ Phone, Inc.; Interstate Telephone Group; Inter-World Communications; JETCOM, Inc.; Louisiana Unwired, Inc.; MERETEL COMMUNICATIONS L.P.; National Tel (Resale Agreement); Netel, Inc.; NEXTEL Communications, Inc.; NOW Communications, Inc.; OmniCall, Inc.; Preferred Carrier Services, Inc.; Preferred Payphones, Inc.; PrimeCo Personal Communications, L.P.; RGW Communications, Inc.; Robin Hood Telecommunications; Shell Offshore Services Company, Inc.; SouthEast Telephone, Ltd.

and Sprint were completed entirely without the need for arbitration. Relevant portions of the Louisiana PSC's record and that Commission's decision in the AT&T/BellSouth arbitration (which had not been appealed as of November 5, 1997) are reproduced in Appendix C (at Tabs 143-197). The Sprint/BellSouth arbitration covered only 8 issues, after an additional 42 were resolved by the parties through stipulation. A copy of that decision (which was not appealed) is provided at Tab 4 of Appendix D. There are no outstanding requests by any CLEC for arbitration with BellSouth in Louisiana.

As Professor Woroch, Executive Director of the Consortium for Research on Telecommunications Policy at the University of California, Berkeley, notes, BellSouth's agreements "go beyond the statutory minimum in promoting competition in Louisiana" and "reveal attempts by [BellSouth] to support robust, productive transactions typical of commercial relationships found in almost any industry." Woroch Aff. ¶¶ 43, 47. They stand as powerful evidence that "local exchange markets in Louisiana are open to competitors, and will remain open." *Id.* ¶ 9.

2. *BellSouth Has Obtained State Approval of Its Statement*

BellSouth has also actively invited entry by CLECs in Louisiana through its Statement, which sets out specific terms and conditions under which BellSouth offers to provide interconnection and access to its network, as well as resale opportunities, on a nondiscriminatory

(Separate Interconnection and Resale Agreements); Southern Phon-Reconnek, Inc.; Sprint Spectrum, L.P.; Sterling International Funding, Inc. d/b/a Reconex; Supra Telecommunications, Inc.; Teleconex, Inc.; Telephone Company of Central Florida; Teleport Communications Group ("TCG"); Tele-Sys, Inc.; Tel-Link, L.L.C. d/b/a TEL-LINK, L.L.C. and Tel-Link of Florida, L.L.C.; TTE, Inc.; U.S. Dial Tone, Inc.; US Telco, Inc.; Wright Businesses, Inc.

basis to any requesting CLEC. It “assures that efficient firms can enter the local exchange markets in Louisiana and offers them . . . every conceivable commercial opportunity so as to maximize the likelihood that efficient entrants will succeed.” Id. ¶ 5. In order to ease entry by CLECs (particularly smaller CLECs) that do not want to negotiate carrier-specific terms, and to establish a useful model for carriers that do want to negotiate, the Statement sets out these offerings in “as straightforward and simple” a way as possible. Varner Aff. ¶ 13 (App. A at Tab 14).

Pursuant to section 252(f) of the Act, the PSC approved BellSouth’s Statement in its Compliance Order on September 5, 1997. That approval required BellSouth to make several revisions to the Statement, including changes to the Statement’s procedure for truing-up rates for interconnection and unbundled network elements (“UNEs”) after completion of the Louisiana PSC’s cost proceeding. See Compliance Order at 5 (summarizing required revisions). The required changes have been made and, as explained below, the Statement also has been revised in light of the Louisiana PSC’s October 24 Pricing Order. A revised Statement that reflects all relevant Louisiana PSC decisions has been approved by the State commission and is provided as an exhibit to the Affidavit of Alphonso Varner. Varner Aff. ¶ 8 & Ex. AJV-1.

B. PrimeCo, Sprint Spectrum, and MereTel Are Operational Track A Competitors

Although BellSouth does not have complete information regarding the activities of all CLECs in Louisiana, BellSouth does have ample information to know that its agreements with three wireless carriers — PrimeCo Personal Communications (“PrimeCo”) and Sprint Spectrum in New Orleans, and MereTel Communications in Baton Rouge — qualify BellSouth to file this

application for authority to provide interLATA services in Louisiana under section 271(c)(1)(A), or "Track A."

Where a BOC relies upon the presence of a facilities-based competitor to support a Track A application, that unaffiliated carrier must: (1) have an "agreement[t] that has been approved under section 252 of this title specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities;" (2) be a "competing provider[r] of telephone exchange service (as defined in section 153(47)(A) of this title), but excluding exchange access;" (3) serve residential and business subscribers; and (4) offer service exclusively or predominantly over its own telephone exchange service facilities. 47 U.S.C. § 271(c)(1)(A). PrimeCo, Sprint Spectrum, and MereTel meet all four requirements in Louisiana.

The PCS providers' satisfaction of the first, third and fourth criteria requires no extended discussion. The BellSouth/PrimeCo interconnection agreement was effective April 1, 1997, see App. B at Tab 28, received state approval id.; Wright Aff. ¶ 115, and has been implemented through actual interconnection. Wright Aff. ¶ 9. Likewise, the BellSouth/Sprint Spectrum agreement was effective April 14, 1997, see App. B at Tab 30, received approval, id.; Wright Aff. ¶ 111, and has been implemented through actual interconnection, Wright Aff. ¶ 9. The BellSouth/MereTel agreement was effective July 15, 1997, see App. B at Tab 66, became approved, Wright Aff. Attach. WLPE-A; Barron Aff., and has been implemented through actual interconnection, Wright Aff. ¶ 119.

PrimeCo, Sprint Spectrum, and MereTel serve both "residential and business subscribers" in Louisiana. Id. ¶¶ 9, 111, 113-115, 118; see Denk Report, Attach. MARC Study at 2 (App. D

at Tab 15); PrimeCo News Release, PCS Subscribers Are Full of Surprises, Aug. 19, 1997

<<http://www.primeco.com>> (see PrimeCo Primer, News). Because these carriers offer service exclusively over their own facilities — including cell sites, switches, and wireline network connections — the “facilities-based” requirement of Track A is satisfied as well. See Wright Aff. ¶¶ 9, 117, 119.

The only remaining issue is whether PrimeCo, Sprint Spectrum, and MereTel are “competing providers of telephone exchange service” for purposes of section 271(c)(1)(A). As explained below, the plain language of this phrase encompasses PCS providers as well as wireline providers. While that should end the inquiry, market evidence confirms that PrimeCo and Sprint Spectrum (and almost certainly MereTel as well) do compete in an economic sense with BellSouth’s wireline operations for local customers in Louisiana.

1. PCS Service Is “Telephone Exchange Service”

While exchange access and cellular service are expressly excluded from the definition of “telephone exchange service” for purposes of section 271,⁶ PCS service is not. Section 271 defines “telephone exchange service” by reference to section 3(47)(A) of the Communications Act, 47 U.S.C. § 153(47)(A), which in turn defines “telephone exchange service” as “service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the

⁶ Exchange access is excluded by name; cellular is excluded by reference to 47 C.F.R. § 22.901.

character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.”⁷

PCS service satisfies this definition by offering service over a radio-based network equivalent to an ordinary wireline exchange, for a non-distance-sensitive “airtime” charge. This is confirmed by the last sentence of section 271(c)(1)(A); that sentence provides that technically and commercially similar cellular service “shall not be considered telephone exchange servic[e]” for purposes of Track A, indicating such wireless service would otherwise qualify. Finally, section 221(b) of the Communications Act, 47 U.S.C. § 221(b), specifically deprives the Commission of jurisdiction over “telephone exchange service” furnished by “mobile, or point-to-point radio,” thus confirming that mobile service can be telephone exchange service.⁸

The Commission recently held that cellular and PCS services are “telephone exchange service.”⁹ Although it relied expressly upon section 3(47)(B) — which is not relevant under section 271(c)(1)(A) — the Commission relied implicitly on section 3(47)(A), by noting Track A’s carve-out of cellular service: “[I]f Congress did not believe that cellular providers were

⁷ Commission regulations defining the same term, promulgated as part of the Commission’s implementation of the 1996 Act, track the statute verbatim. See 47 C.F.R. § 51.5.

⁸ This section predates the 1996 Act, which added new language to the definition of “telephone exchange service” as section 3(47)(B). Accordingly, radio services must qualify as telephone exchange service under the prior definition of “telephone exchange service” (current section 3(47)(A)), which is referenced in section 271(c)(1)(A).

⁹ First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15999-16000, ¶ 1013 (1996) (“Local Interconnection Order”), modified on reconsideration, 11 FCC Rcd 13042 (1996), vacated in part, Iowa Utils. Bd. v. FCC, 120 F.3d 754 (8th Cir. 1997), modified, 1997 U.S. App. LEXIS 28652 (8th Cir. Oct. 14, 1997).

engaged in the provision of telephone exchange service,” the Commission observed, “it would not have been necessary to exclude cellular providers from this provision.”¹⁰ Because the cellular carve-out of Track A applies only to section 3(47)(A), the Commission thus necessarily imputed to Congress a judgment that wireless service qualifies as telephone exchange service under that section — and therefore section 271(c)(1)(A) as well.

2. *Track A Does Not Require That the Competitor's Service Be Equivalent in Every Respect to the BOC's*

Having brought PCS within Track A through the definition of “telephone exchange service,” Congress did not take it outside Track A through the statute’s reference to a “competing provider.” Although the Commission has not fully interpreted this phrase in the context of section 271(c)(1)(A), it has stated that, to be a competing provider to the BOC, a competitor need not meet “any specified level of geographic penetration” or have any particular market share, but rather must “be said to be an actual commercial alternative to the BOC”¹¹ and “actually be in the market and operational (i.e., accepting requests for service and providing such service for a fee).”¹² PrimeCo, Sprint Spectrum, and MereTel satisfy both the plain statutory requirement and the Commission’s gloss on that test.

¹⁰ *Id.* 11 FCC Rcd at 16000, ¶ 1014.

¹¹ Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, FCC No. 97-298, at ¶¶ 76-78 (rel. Aug. 19, 1997) (“Michigan Order”).

¹² *Id.* ¶ 75

Looking first to the structure of the Act, the fact that PCS providers may qualify as “competing providers” under section 271(c)(1)(A) is demonstrated by Congress’s use of the phrase “competing providers” elsewhere in the 1996 Act. Section 251(b)(3) imposes upon incumbent LECs a duty to provide “competing providers of telephone exchange service” dialing parity and nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings.¹³ In implementing this provision, the Commission has broadly defined “competing provider” to mean “a provider of telephone exchange . . . services that seeks nondiscriminatory access from a [LEC] in that LEC’s service area.”¹⁴ This definition includes requesting PCS providers; indeed, PrimeCo, Sprint Spectrum, and MereTel have all negotiated for access to telephone numbers, directory listings and directory assistance, operator services, and dialing parity in Louisiana.¹⁵ In light of the canon that language used in more than one place in a statutory scheme must be read the same way each time it appears,¹⁶ it follows that the phrase

¹³ Likewise, section 251(b)(4) requires incumbent LECs to give “competing providers of telecommunications services” access to poles, ducts, conduits, and rights-of-way.

¹⁴ 47 C.F.R. § 51.217(a)(1).

¹⁵ PrimeCo Agreement §§ X, XI, XVI.E; Sprint Spectrum Agreement §§ XI, XII, XVII.E; MereTel Agreement §§ XI, XII, XVII.E; see also Second Report and Order and Memorandum Opinion and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 19392, 19430, ¶ 71 (1996) (“Dialing Parity Order”) (“We anticipate that local dialing parity will be achieved upon implementation of the number portability and interconnection requirements of section 251.”).

¹⁶ See, e.g., Ratzlaf v. United States, 510 U.S. 135, 143 (1994); Atlantic Cleaners & Dyers, Inc. v. United States, 286 U.S. 427, 433 (1932).

“competing provide[r] of telephone exchange service” should be read by the Commission to encompass PCS providers for purposes of Track A as well.

The legislative history of Track A confirms this. As originally drafted by the House Commerce Committee, the provision that became section 271(c)(1)(A) specified that a Track A carrier must be “an unaffiliated competing provider of telephone exchange service that is comparable in price, features, and scope” to the BOC’s service.¹⁷ Cellular services were deemed by the Committee not to satisfy this requirement of comparability, and so they were expressly excluded from Track A.¹⁸ Subsequently, however, the underscored language of the Committee bill was removed on the House floor.¹⁹ This was no technical change: Representative Bryant objected, without success, that the deletion would make a “big major change” and unreasonably ease BOC entry into long distance.²⁰

As finally enacted, section 271(c)(1)(A) requires only that a facilities-based provider of telephone exchange service (other than exchange access) “actually be in the market” and compete for customers in a geographic locale served by the BOC. Michigan Order ¶ 75. This ensures, for example, that a BOC cannot satisfy section 271(c)(1)(A) through an interconnection agreement with an independent LEC that serves an adjacent service area. By continuing to exclude cellular

¹⁷ H. R. Rep. 104-204, pt. 1 at 8 (1995) (“House Report”) (proposing new section 245(c)(1)(A)) (emphasis added).

¹⁸ See *id.*, pt. 1 at 77 (cellular excluded “since the Commission has not determined that cellular is a substitute for local telephone service”).

¹⁹ See S. 652 § 101(a) (House substitute, Oct. 12, 1995) (proposing new § 245(a)(2)(a)).

²⁰ 141 Cong. Rec. H8451, H8452 (daily ed. Aug. 4, 1995).